

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

JOSEPH S. VON KAENEL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:16-cv-01414-HEA
	)	
ARMSTRONG TEASDALE LLP,	)	
	)	
Defendant.	)	

**DEFENDANT’S MOTION FOR JUDGMENT ON THE PLEADINGS**

COMES NOW Defendant Armstrong Teasdale LLP (“Defendant”), by and through its undersigned counsel, and pursuant to Federal Rule of Civil Procedure 12(c), hereby moves the Court for entry of Judgment on the Pleadings. In support of its Motion, Defendant states as follows:

1. In this case, Plaintiff Joseph S. von Kaenel (“Plaintiff”) alleges age discrimination in violation of the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. §§ 623, *et seq.*, based upon Defendant’s retirement policy for Equity Partners (and, in the event of a corporate Equity Partner, the Associated Shareholder’s retirement).

2. Despite pleading he was an Equity Partner of Defendant, Plaintiff asserts he was actually an “employee” of Defendant under the ADEA.<sup>1</sup> (Complaint, ¶¶ 6, 8, 19.) Whether Plaintiff was an “employee” of Defendant, however, has already been fully litigated and decided against him in a Missouri state court.

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<sup>1</sup> It was actually Plaintiff’s professional corporation and not Plaintiff himself, which was the Equity Partner of Defendant. Plaintiff was the Associated Shareholder of a professional corporation, Joseph S. von Kaenel, P.C., which Plaintiff created for his own benefit, and through which he personally exercised all Equity Partner rights. This technical issue is not the subject of Defendant’s instant Motion. For purposes of this Motion, Defendant takes Plaintiff’s pleading claiming to be an equity partner (Complaint, ¶ 6) on its face.

3. Prior to filing this case, Plaintiff sought relief from the Circuit Court of Cole County, Missouri (“State Court”), after the Missouri Commission on Human Rights (“MCHR”) refused to issue Plaintiff a Notice of Right to Sue Letter in connection with Plaintiff’s Charge alleging age discrimination under the Missouri Human Rights Act (“MHRA”). *See Joseph S. von Kaenel v. Alisa Warren*, Case No. 15AC-CC00472 (Cole Cnty. Cir. Ct.); (*see also* State Court Petition, attached hereto as Exhibit A).<sup>2</sup>

4. On June 30, 2017, the State Court held an evidentiary hearing, during which the parties litigated whether Plaintiff was an “employee” of Defendant. (*See* State Court Transcript excerpts, attached hereto as Exhibit B; Plaintiff’s Proposed Order, attached hereto as Exhibit C).

5. On October 19, 2017, the State Court issued a final judgment (“Judgment”) denying Plaintiff’s Petition for a Writ of Mandamus. In its final Judgment, the State Court expressly determined that “as an equity partner of Armstrong Teasdale LLP, [Plaintiff] is not a covered employee protected by the [MHRA].” (*See* Judgment, attached hereto as Exhibit D). Plaintiff did not appeal that Judgment.

6. The State Court’s determination that Plaintiff was not an “employee” of Defendant is entitled to preclusive effect, such that Plaintiff is collaterally estopped from relitigating this issue before this Court. (*See* State Court March 14, 2016 Order, attached hereto as Exhibit E); *see, e.g.*,

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<sup>2</sup> The Court can take judicial notice of the State Court filings and transcript referenced herein and attached hereto. *See Germain Real Estate Co., LLC v. HCH Toyota, LLC*, 778 F.3d 692, 695 (8th Cir. 2015) (in reviewing grant of motion to dismiss, the court “considered certain matters of public record—the state-court hearing transcripts and order—as well as documents that are necessarily embraced by the federal complaint”); *Knutson v. City of Fargo*, 600 F.3d 992, 1000 (8th Cir. 2010) (“[W]e see no reason why the District Court . . . could not take judicial notice of the publicly available state-court argument, particularly where the issue at hand is possible preclusion of a federal claim as a result of those same state-court proceedings.”); *Martin v. Cape Girardeau Cty. Sheriff’s Dep’t*, No. 1:17-CV-110-RLW, 2017 WL 5151351, at \*3 (E.D. Mo. Nov. 3, 2017) (“This Court takes judicial notice of this Missouri State Court record, as obtained through the public records published on Missouri Case.net.”).

*Payne v. State of Nebraska, Department of Correctional Services*, 45 F.3d 433, at \*1 (8th Cir. 1994) (per curiam); *Nichols v. City of St. Louis*, 837 F.2d 833, 835 (8th Cir. 1988); *Hickman v. Elec. Keyboarding, Inc.*, 741 F.2d 230, 234 (8th Cir. 1984); *Pittman v. Ripley Cty. Mem'l Hosp.*, No. 1:07CV00111LMB, 2009 WL 1738491, at \*5 (E.D. Mo. June 18, 2009); *King v. City of Pagedale*, 573 F. Supp. 309, 314 (E.D. Mo. 1983).

7. Because Plaintiff is collaterally estopped from challenging that he was not an “employee” of Defendant, Plaintiff’s instant ADEA claim necessarily fails. *See, e.g., Rhoads v. Jones Fin. Companies*, 957 F. Supp. 1102, 1106 (E.D. Mo.), *aff’d*, 131 F.3d 144 (8th Cir. 1997) (“Partners in a partnership are not employees and thus cannot avail themselves of the benefits of the antidiscrimination statutes.”); *Maher v. Price Waterhouse*, No. 84-1522 C (2), 1985 WL 9500, at \*1 (E.D. Mo. Apr. 8, 1985) (“[T]his Court holds that partners of an accounting firm are not employees for purposes of the ADEA.”).

8. Defendant incorporates herein its Memorandum in Support of Motion for Judgment on the Pleadings, filed contemporaneously herewith.

WHEREFORE, Defendant Armstrong Teasdale LLP prays this Court enter an Order granting Defendant’s Motion for Judgment on the Pleadings, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: February 2, 2018

/s/ Neal F. Perryman  
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*Attorneys for Defendant  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was served via this Court's ECF system to the following parties this 2nd day of February, 2018

/s/ Neal F. Perryman